

No. 14/13/87-6Lab./402.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of Transport Commissioner, Haryana, Chandigarh *versus* Dal Chand:—

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD.

Reference No. 57/92

between

1. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH

2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD. .. *Management*

versus

SH. DAL CHAND, S/O SH. MATA DIN, VILLAGE NANGLIYA, POST OFFICE BHIWANI,
TEHSIL TIJARA, DISTRICT ALWAR (RAJASTHAN) .. *Workman.*

Present :

Sh. S. K. Bakshi for the workman.

Sh. Jagbir Singh for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act') the Governor of Haryana referred the following dispute between the parties mentioned above to this Court for adjudication,—vide Haryana Government Endorsement No. 52350-56, dated 30th November, 1992 :—

Whether the termination of services of Sh. Dal Chand is legal & justified? If not, to what relief is he entitled to?

2. The case of the workman is that he was appointed on 19th December, 1986 as a permanent helper but the respondent had been taking work from him as a permanent clerk. He had not given any cause of complaint about his work and conduct till 15th September, 1987. His services were illegally terminated on 16th September, 1987 without any prior notice. He served demand notice and on that basis he was taken back in service. Again his services were terminated with effect from 13th May, 1991 without payment of notice pay or retrenchment compensation envisaged under Section 25-F of the Act. He is thus entitled to be reinstated into service with continuity in service and full back wages.

3. The respondent No. 2 submitted written statement dated 28th January, 1994 stating therein that the workman was appointed on 19th December, 1986 as daily wages helper and not as a regular helper against a permanent post. It was further stated that the workman had worked as helper till 12th May, 1991 and then he had absented himself wilfully with effect from 13th May, 1991. His services were never terminated and the respondent had never refused to take him on duty.

4. The workman submitted rejoinder dated 19th March, 1994 re-asserting the previous averments and denying the averments of the respondent No. 2.

5. On the pleadings of the parties, the following issue was framed:

(1) As per terms of reference.

6. Both the parties have led evidence.

7. I have heard the authorised representatives of both the parties and have also gone through the file carefully. My findings on the aforesaid issue are as under :—

Issue No. 1 :

8. The respondents have examined one witness MW-1 Hormraj Clerk and he deposed facts mentioned above in the written statement. He further stated that the respondent No. 2 had issued two telegrams Ex. M-1 and Ex. 7-2 to the workman to report for duty but he had not done so. In the end, he stated that the respondents had not terminated the services of the workman till date and he had been continuously absent from duty.

9. On the other hand, the workman deposed that he had been working with the respondents during the period from 19th December, 1986 to 12th May, 1991. His services thereafter terminated without issuing show cause notice and payment of notice pay and retrenchment compensation. He had never been absent from duty.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the respondents that it stands proved from the statement of MW-1 Hemraj Clerk as well as from two telegrams Ex. M-1 and Ex M-2 that the workman himself has been absent from duty with effect from 13th May, 1991 despite the fact that he was asked to resume duty through two telegrams. The respondents have not terminated the services of the workman. It is thus, proved that the workman himself had abandoned the job. Consequently, he is not entitled to any relief.

11. In reply, it has been submitted that MW-1 Hemraj, clerk admitted in his cross-examination that the workman had reported for duty after receipt of the telegram Ex. M-1 but he was not allowed to resume duty for the reasons not known to him. MW-1 Hemraj, Clerk also admitted in his cross examination that the workman had submitted two applications dated 4th June, 1991 and 11th June, 1991 that was not being allowed to resume duty. Thus, the version of the respondents that the workman himself had been absent from duty with effect from 13th May, 1991 stands falsified. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages.

12. It is clear from the position discussed above that MW-1, Hemraj, Clerk demolished the case of the respondents set out in the written statement that the workman had not reported to join duty even after issuance of the first telegram dated 17th May, 1991 Ex. M-1. So far as the second telegram dated 18th June 1991 Ex. M-2 is concerned, it is observed that the MW-1 Hemraj, clerk stated in his cross examination that the receipt regarding receipt of this telegram by the workman is not available in the record and so he could not say as to whether it was received by the workman or not. In this situation, it can not be believed that the workman had not reported for duty even after the receipt of the second telegram. It is thus, held that the respondents had illegally terminated the services of the workman with effect from 13th May, 1991 by not allowing him to join duty without pay of notice payment and retrenchment compensation. Consequently, the impugned action of the respondents terminating the services of the workman in the manner referred to above is illegal and unjustified. As a sequel to this findings the workman is entitled to be reinstated into service with continuity in service and full back wages. The award is passed accordingly.

The 28th February, 1995.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endst. No. 291, dated 1st March, 1995

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,
Presiding Officer,
Labour Court-II, Faridabad.

The 24th March, 1995

No. 14/13/87-6Lab/405—In pursuance of the provisions of clause 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of Secretary, Haryana State Electricity Board, Sakti Bhawan, Sector 6, Panchkula, *versus* Phool Singh :—

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 373/90

Date of Receipt : 20-3-90

Date of Decision : 8-3-95

SHRI PHOOL SINGH, S/O UDA RAM, C/O MAZDOOR EKTA UNION, HISAR .. Applicant

versus

1. SECRETARY, HARYANA STATE ELECTRICITY BOARD, SAKTI BHAWAN, SECTOR 6, PANCHKULA

2. EXECUTIVE ENGINEER, HARYANA STATE ELECTRICITY BOARD, TOHANA (HISAR)

.. Respondent management.

Present :

Shri Bhagwat Dayal for the workman.

Shri Ganga Ram for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Phool Singh and the above mentioned management for adjudication to this Court,—vide Labour Department letter No. Hsr/15-90/10422—28, dated 9th March, 1990 :—

Whether termination of services of Phool Singh is justified and in order? If not, to what relief is he entitled?

2. Phool Singh, workman was initially appointed as T-Mate in 1969 and he was promoted as Assistant Lineman (here-in-after referred to as ALM) in 1979. The workman met with an accident on 31st March, 1985, at 9.30 P.M. while on duty and during treatment, as he developed gangrene, his left arm was amputated and the Medical Officer advised that he should be given light duty. However, the services of the workman were terminated on 1st July, 1989, without complying with the provisions of Section 25-F of the Act. The workman has, therefore claimed that termination of his services amounted to "retrenchment" as defined in Section 2 (oo) of the Act and that the same was illegal. He, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, while not disputing the date of appointment of the workman and his subsequent promotion as ALM, stated that the accident took place due to the negligence of the workman himself, as he was under the influence of liquor at that time. It was further stated that the medical authority had declared that the workman was suffering from 55% disability and as such, the workman was discharged on medical grounds, as he had become medically unfit to perform the duties of the post of ALM. It was further stated that subsequently, the workman was given fresh appointment as a peon with effect from 19th March, 1990, after the workman had applied for a light job. Several preliminary objections were also raised and it was stated that the reference was bad as it did not disclose any industrial dispute.

4. On the above pleadings of the parties, following issues were framed on 27th August, 1990, by my learned predecessor :—

1. As per reference.
2. Whether the reference is bad as alleged in preliminary objection No. 1 & 2?
3. Whether the workman is entitled to the same pay and allowances after his alleged fresh appointment as peon?
4. Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri B.D. Sharma Authorised Representative of the workman and Shri Ganga Ram Authorised Representative of the management and have gone through the case file. My findings on the above issues are as under :—

Issue No. 1 ;

6. The fact in this case are not much in dispute. It is not disputed that Phool Singh was working as ALM, when on 31st March, 1985, he met with an accident and subsequently, during treatment, his left arm was amputated and he was declared by Chief Medical Officer, Hisar to suffer from 65% disability. The management, thereafter, served notice dated 16th January, 1989 (Ex. M-1) asking the workman to show cause within one month, as to why he should not be discharged on account of 65% disability and it was observed that he was now unable to perform the duties of ALM. The receipt of this notice is admitted by the workman and thereafter, the services of the workman were dispensed with the effect from 22nd June, 1989 as is evident from Ex. M-5. It is also admitted by the workman that he is now working as peon under the management since 19th March, 1990.

7. Obviously, the management had dispensed with the services of the workman as ALM on the ground of his continued ill health, as contained in Sub Clause (c) of Section 2(oo) of the Act. It has been held by Hon'ble Supreme Court in the authority reported as *Anand Bihari others versus Rajasthan State Road Transport Corporation Jaipur & others* 1991 Lab. I.C.-494 that any disorder and health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. In our case, one of the primary duty of ALM is to climb on electric poles and to work on live wires. I am of the opinion that since the left hand of the workman in our case had been amputated, the said disability would certainly adversely affect the normal working of the workman as ALM. I, therefore, hold that the said phrase would include the case of present workman, whose left hand had been amputated and that his disabilities bound to interfere with the normal working as ALM.

8. It is, thus obvious, that the termination of services of the workman in the present case, being covered by sub-section (c) of section 2(oo) would not amount to "retrenchment" as defined in Section 2 (oo) of the Act. Hence the termination is not illegal because the provisions of Section 25-F had not been followed.

9. Although the orders of termination of service cannot be faulted on the ground of breach of the Act, the important question that still remains to be considered is the long delay which the management took in discharging the workman after the accident. It is evident from Ex. M-8 that on 8th October, 1985, the workman was declared having 65% disability on account of amputation of his left arm and it is also evident from Ex. W-2 that the Chief Medical Officer, Hisar had certified that Phool Singh, ALM was fit for light duty. This certificate was issued on 19th November, 1985 on a reference made by the management. However, the management allowed the workman to continue as ALM till 16th January, 1989, when show cause notice was issued to him and ultimately his services were dispensed with on 22nd June, 1989. He was then re-employed as peon on 19th March, 1990. In my opinion since the workman was allowed to work as ALM till 22nd June, 1989, he could have continued as such till 18th March, 1990, when he was offered alternate job as a peon and to this extent only, the order of termination is bad and I hold that the workman is entitled to wages of the post of ALM for the period from 1st July, 1989 to 18th March, 1990. It is, however, made clear that the action of the management in providing alternate job to the workman from 19th March, 1990, cannot be faulted as it was done on medical ground and he was not considered fit to perform the duty of ALM on account of his continued ill health.

10. In the light of discussion above while it is held that the termination of services of the workman was justified, he will be paid wages of ALM from 1st July, 1989 to 18th March, 1990. The issue is decided accordingly.

Issue No. 2:

11. This issue was not pressed by the Authorised Representative of the management and was conceded to by him during arguments. This issue is, thus, answered against the management.

Issue No. 3:

12. In the authority of *Anand Bihari versus Rajasthan State Road Transport Corporation* (Supra) it has nowhere been held that alternate job, which may be available and which is offered to the retiring workman, must be having the pay last drawn by the retiring workman. As such it can not be said that the workman is entitled to the same pay, he was drawing as ALM when he was offered fresh appointment as peon. This issue is, therefore, answered against the workman.

Issue No. 4 Relief

13. In view of my findings on the above issues, the termination of services of the petitioner is held justified and in order, but the termination order is modified to the extent that the workman shall be entitled to wages of the post of ALM from 1st July, 1989 to 18th March, 1990. The management is directed to pay wages for this period to the petitioner within a period of four months from the date of this award, failing which the petitioner shall be entitled to interest at the rate of 12% per annum from the date of this award till the date of actual payment. The reference is answered accordingly, with no order as to costs.

The 8th March, 1995.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour
Court, Hisar.

Endorsment No. 325, dated the 9th March, 1995

A copy, with two spare copies, is forwarded to the Financial Commissioner & Secretary, Governments Haryana, Labour & Employment Departments Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer.
Industrial Tribunal-cum-Labour Court, Hisar.